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Chuck and I are at a disadvantage because we have not been involved in the conversations or seen the decision document that is referenced in the comments.

Sorry we can't be more helpful in this effort.

Here is one of the old references to the inadequacies of the OFPA protections.

Independent Multidisciplinary Science Team (IMST). 1999. Recovery of wild salmonids in western Oregon forests: Oregon Forest Practices Act rules and the measures in the Oregon plan for salmon and watersheds Technical report. IMST (OR), v 1999-1

Ken

Options for Closing the Gap on Forestry Management Measures

January 2015

Background/Context

Additional progress is needed in Oregon on the additional management measures for forestry that are necessary to achieve and maintain water quality standards and designated uses. The following describes how Oregon may choose to proceed to adopt additional protective forestry measures to satisfy the CZARA additional management measures for forestry and help with coho recovery.

General CZARA Guidelines for Approval

There are two pathways for states to achieve an approvable program: 1) *regulatory program*; **OR** 2) *voluntary approach*. A voluntary approach requires that the State provide the following:

- a description of the voluntary programs, including the methods for tracking and evaluating those programs, Oregon will use to encourage implementation of the management measures;
- a legal opinion from the attorney general or an attorney representing the agency with jurisdiction for enforcement that such authorities can be used to prevent nonpoint pollution and require management measure implementation, as necessary; and
- a description of the mechanism or process that links the implementing agency with the enforcement agency and a commitment to use the existing authorities where necessary.
- .

Reasonable Options for Oregon to Move towards Get to an Approvable CZARA Program and Address Limitations in Forestry That Affect Coho Recovery

- **Riparian Buffers**
 - **Medium and Small-Fish Bearing Streams: State currently pursuing regulatory program**
 - Current Deficiencies/Shortfall: ~~Small no-cut buffer~~ Inadequate riparian protections for small and medium fish-bearing streams. Do not ensure forest operations meet the State water quality standards for protecting cold water in small and medium fish bearing streams. ~~Creates temperature, erosion and sediment problems.~~ Inadequate riparian buffers are limiting coho recovery.(need to have NMFS/NOAA's weigh in on this statement)
 - Examples of State Actions Needed: 1) Complete riparian rule by end of 2015; 2) Rule should cover a ~~broad range of~~ medium and small-fish bearing streams; and 3) Rule should provide ~~an adequate~~ protective no cut buffers with a wider riparian management zone than currently required by OFPA. consistent with National Marine Fisheries (NMFS) science. (I am not sure we want to include the consistency language. While I would like to see the larger buffers, I highly suspect the State will be considering

smaller buffers than required at the federal level but larger than the State's existing ones.)

- **Small, Non-fish bearing streams (including perennial and ephemeral) : State not currently pursuing a regulatory program; voluntary approach would need to address the following**

- **Current Deficiencies/Shortfall:** No riparian protections buffers for small non-fish bearing streams. Do not ensure forest operations meet the State water quality standards for protecting cold water criterion. ~~Creates temperature, erosion and sediment problems for salmon spawning areas and downstream habitat.~~ Inadequate protections are limiting coho recovery. .(need to have NMFS/NOAA's weigh in on this statement)
- **Examples of State Actions Needed:** 1) Adequate no cut buffer with a wider riparian management zone consistent with National Marine Fisheries (NMFS) science; (

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- 2) Meet other elements needed for voluntary program (see General CZARA Guidelines for Approval above or NOAA and EPA's 2001 memo on Enforceable Policies and Mechanisms for State Coastal Nonpoint Source Programs (<http://coast.noaa.gov/czm/pollutioncontrol/media/epmmemo.pdf>).

- **Roads: regulatory and/or voluntary approaches would need to address the following**

- **Current Deficiencies/Shortfall:**
 - *Regulatory* - Recent rule changes and new policies do not sufficiently address water quality impairments associated with "legacy" roads, i.e. roads that do not meet current State requirements with respect to siting, construction, maintenance and road drainage, or impairments associated with the portion of the existing network where construction or reconstruction is not proposed.
 - *Voluntary* - ODF voluntary program does not ~~include~~ address legacy roads. Voluntary program does not include monitoring and tracking nor does identification of enforceable authorities to back-up voluntary program.
- **Examples of State Actions Needed:** 1) Establish regulations and or policies that specifically address legacy roads and roads that do not meet current State requirements with respect to siting, construction, maintenance and road drainage, or impairments associated with the portion of the existing network where construction or reconstruction is not proposed. + 2) Use voluntary approach to

include legacy roads in road inventory; 2 3) Include legacy roads in roads inventory, including legacy roads having potential to deliver sediment to streams; 3 4) Develop ranking system to establish priorities for road repair or decommissioning; 4 5) Conduct evaluation, problem identification process and schedule for repairing problem roads; 5 6) Monitor and track voluntary measures. Examples could include those similar to WA's and ID's; 6 7) Identify ODF and DEQ general authorities for enforcing changes in critical areas when voluntary measures are not implemented. **(For effective voluntary approach, 1-6 2-7 are needed as a package. All voluntary approaches need monitoring, tracking and identification of enforcement authorities that can be used if voluntary approach fails to achieve the desired results.)**

- **Landslides: regulatory and/or voluntary approaches that could be established would need to address the following**
 - Current Deficiencies/Shortfall: Oregon does not have additional management measures for forestry in place to protect high-risk sites landslide areas to ensure water quality standards and designated uses are protected.
 - Examples of State Actions Needed: 1) Adopt similar harvest and road construction restrictions for all high-risk landslide prone areas with the potential to impact water quality and designated uses, not just those where landslides pose risks to life and property; ~~1-) Measures to protect landslide areas;~~ 2) Voluntary programs to encourage forestry BMPs to protect high-risk landslide areas and ensure that roads are designed to minimize slope failure risk; 3) Monitor and track voluntary measures (Examples could include those similar to Washington's and Idaho's programs); 4) Identify ODF and DEQ general authorities for enforcing changes in critical areas when voluntary measures are not implemented. **(All voluntary approaches need monitoring, tracking and identification of enforcement authorities that can be used if voluntary approach fails to achieve the desired results.)**
- **Spray Buffers for Aerial Application of Herbicides on Non-Fish Bearing Streams: voluntary approach would need to address the following**
 - Current Deficiencies/Deficiencies: No spray buffer to protect stream from directly application to water.
 - Examples of State Actions Needed: 1) If the state adopts adequate riparian protections for non-fish bearing streams, it may suffice as a protective herbicide spray buffers. Otherwise, the state may choose to 1) Revise ODF Notification of Operation form to add a check box for aerial applicators to certify that they will adhere to FIFRA labels for all stream types; 2) Guidelines for voluntary buffer protections for aerial application of herbicides on non-fish bearing streams; 3) Monitor and track voluntary measures using existing pesticide regulations; 4) Explore ODF and DEQ general authorities for enforcing changes in critical areas when voluntary measures are not implemented.

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Options for Closing the Gap on Forestry Management Measures

January 2015

Background/Context

Additional progress is needed in Oregon on the additional management measures for forestry management measures that are necessary to achieve and maintain water quality standards and designated uses so that they are protective of water quality and fish habitat. The following describes how Oregon may choose to proceed to adopt additional protective forestry measures to satisfy the CZARA additional management measures for forestry and help with and close the gap for purposes of CZARA and coho recovery.

Comment [AC1]: The add MMs are not the same as the actual forestry MM. Need to be clear.

Comment [AC2]: Important to be consistent with statutory lang.

Comment [AC3]: I think we need to make this statement clearly. Doing this will enable them to address the CZARA add MMs for forestry. And will help with coho recovery (but isn't all they did for coho, or may CZARA, for that matter...depending on Ag and public comments on other parts of OR's program we have already given interim approval too.

General CZARA Guidelines for Approval

There are two pathways for states to achieve an approvable program: 1) *regulatory program*; **OR** 2) *voluntary approach*. A voluntary approach requires that the State provide the following:

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- a description of the voluntary programs, including the methods for tracking and evaluating those programs, Oregon will use to encourage implementation of the management measures;
- a legal opinion from the attorney general or an attorney representing the agency with jurisdiction for enforcement that such authorities can be used to prevent nonpoint pollution and require management measure implementation, as necessary; and
- a description of the mechanism or process that links the implementing agency with the enforcement agency and a commitment to use the existing authorities where necessary.
- a program description, monitoring, tracking, and an enforceable authority to back up the voluntary program. If the State chooses to pursue a voluntary approach, the State needs to identify state enforcement authorities that can be used to prevent nonpoint pollution and expressly commit to use those authorities if voluntary measures are not complied with or where voluntary measures are inadequate in delivering the needed protections. The State needs to describe the mechanism or process that links the implementing agency with the enforcement agency.

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Reasonable Options for Oregon to ~~move towards~~ Get to an Approvable CZARA Program and Address Limitations in Forestry That Affect Coho Recovery

Comment [AC4]: Need to make sure language is consistent with EP&M guidance.

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Comment [AC5]: Or Could say: "Satisfy the CZARA Additional Management Measures for Forestry and Help With Coho Recovery" (see also comment above).

• Riparian Buffers

- **Medium and Small-Fish Bearing Streams:** State currently pursuing regulatory program
 - Current Deficiencies/Shortfall: Small-no-cut-bufferInadequate riparian protections for small and medium fish-bearing streams. Do not ensure forest operations meet the State water quality standards for protecting cold water in small and medium fish bearing streams. Creates temperature,

~~erosion and sediment problems. Inadequate riparian buffers are limiting coho recovery.~~ (need to have NMFS/NOAA's weigh in on this statement)

- ~~Examples of State Actions Needed: 1) Complete riparian rule by end of 2015; 2) Rule should cover a broad range of medium and small-fish bearing streams; and 3) Rule should provide an adequate protective no cut buffers with a wider riparian management zone than currently required by OFPA.~~ consistent with National Marine Fisheries (NMFS) science. (to be deleted)

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- **Small, Non-fish bearing streams (including perennial and ephemeral) : State not currently pursuing a regulatory program; voluntary approach would need to address the following**

- Current Deficiencies/Shortfall: No riparian protections ~~buffers~~ for small non-fish bearing streams. Do not ensure forest operations meet the State water quality standards for protecting cold water criterion. ~~Creates temperature, erosion and sediment problems for salmon spawning areas and downstream habitat.~~ Inadequate protections are limiting coho recovery. (need to have NMFS/NOAA's weigh in on this statement)
- Examples of State Actions Needed: 1) Adequate no cut buffer with a wider riparian management zone consistent with National Marine Fisheries (NMFS) science; (again, I am not sure we want to include the consistency language. While I would like to see the larger buffers, I highly suspect the State will be considering smaller buffers than required at the federal level but larger than the State's existing ones.)
- 2) Meet other elements needed for voluntary program (see General CZARA Guidelines for Approval above or NOAA and EPA's 2001 memo on Enforceable Policies and Mechanisms for State Coastal Nonpoint Source Programs (<http://coast.noaa.gov/czm/pollutioncontrol/media/epmmemo.pdf>) Monitoring, tracking, and reporting similar to other ODF programs for other tree harvests; and 3) Identify ODF and DEQ general authorities for enforcing changes in critical areas when voluntary measures are not implemented.

- **Roads: regulatory and/or voluntary approaches would need to address the following**

- Current Deficiencies/Shortfall:
 - *Regulatory* - Recent rule changes and new policies do not sufficiently address water quality impairments associated with "legacy" roads, i.e.

Comment [AC6]: Our decision doc does not discuss erosion/sediment problems related to rip protection so agree with Alan's edit to strike this language.

Comment [rw7]: Please see the attached document with excerpts from the Federal Register Notice announcing our determination that listing as threatened under the ESA was warranted and describing the role of forest practices in that decision.

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Comment [AC10]: Agree d: See earlier comment about concern with holding OR to higher standard than WA or CA.

Comment [AC11]: Rather than resummize what OR needs to do for voluntary programs and risk mis-stating or missing something recommend just referring them to the bullets above or the EP&M memo for more detail.

roads that do not meet current State requirements with respect to siting, construction, maintenance and road drainage, or impairments associated with the portion of the existing network where construction or reconstruction is not proposed.

- *Voluntary* - ODF voluntary program does not ~~include~~ address legacy roads. Voluntary program does not include monitoring and tracking nor does identification of enforceable authorities to back-up voluntary program.
 - Examples of State Actions Needed: 1) Establish regulations and or policies that specifically address legacy roads and roads that do not meet current State requirements with respect to siting, construction, maintenance and road drainage, or impairments associated with the portion of the existing network where construction or reconstruction is not proposed. 2) Use voluntary approach to include legacy roads in road inventory; 3) Include legacy roads in roads inventory, including legacy roads having potential to deliver sediment to streams; 4) Develop ranking system to establish priorities for road repair or decommissioning; 5) Conduct evaluation, problem identification process and schedule for repairing problem roads; 6) Monitor and track voluntary measures. Examples could include those similar to WA's and ID's; 7) Identify ODF and DEQ general authorities for enforcing changes in critical areas when voluntary measures are not implemented. **(For effective voluntary approach, 1-6 2-7 are needed as a package. All voluntary approaches need monitoring, tracking and identification of enforcement authorities that can be used if voluntary approach fails to achieve the desired results.)**
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Comment [PC12]: Need short description of current inadequacy.

- **Spray Buffers for Aerial Application of Herbicides on Non-Fish Bearing Streams:**
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 - Current Deficiencies/Deficiencies: No spray buffer to protect stream from directly application to water.
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Comment [PC13]: Help me out here. What exactly are we saying here or asking for?